

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
ALEXANDER DUNLOP,

Plaintiff,

-versus-

06 CV 433 (RJS)(JCF)

THE CITY OF NEW YORK, et al.

ECF CASE

Defendants.
----- X

ANSWER

Defendants The City of New York, Michael Bloomberg, Raymond Kelly, Joseph Esposito, Thomas Graham, John Colgan, Maya Gomez, and Ilise Williams ("Defendants"), by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the Third Amended Complaint ("Complaint"), respectfully allege, upon information and belief, as follows:¹

AS TO THE "NATURE OF ACTION"

Defendants deny the allegations set forth in this unnumbered paragraph and in the unnumbered paragraph preceding this paragraph.

AS TO THE "PRELIMINARY STATEMENT"

1. Defendants deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiff seeks relief.

2. Defendants deny the allegations set forth in paragraph "2" of the Complaint.

¹ The New York County District Attorney, Robert Morgenthau, and former Assistant District Attorney Willa Concannon were dismissed from this action by order dated June 5, 2007.

3. Defendants deny the allegations set forth in paragraph "3" of the Complaint.

AS TO "JURISDICTION AND CONDITIONS PRECEDENT"

4. Defendants deny the allegations set forth in paragraph "4" of the Complaint.

5. Defendants deny the allegations set forth in paragraph "5" of the Complaint.

6. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the Complaint.

AS TO "JURY DEMAND"

8. Defendants deny the allegations set forth in paragraph "8" of the Complaint, except admit that plaintiff demands a trial by jury.

AS TO "PARTIES"

9. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the Complaint.

10. Defendants deny the allegations set forth in paragraph "10" of the Complaint, except admit that The City of New York is a municipal corporation duly organized and operating under the laws of the State of New York.

11. Defendants deny the allegations set forth in paragraph "11" of the Complaint, except admit that Michael Bloomberg is the Mayor of the City of New York.

12. Defendants deny the allegations set forth in paragraph "12" of the Complaint, except admit that Raymond Kelly is the Commissioner of Police.

13. Defendants deny the allegations set forth in paragraph "13" of the Complaint, except admit that Joseph Esposito is employed by the City of New York.

14. Defendants deny the allegations set forth in paragraph "14" of the Complaint, except admit that Thomas Graham is employed by the City of New York.

15. Defendants deny the allegations set forth in paragraph "15" of the Complaint, except admit that John Colgan is employed by the City of New York.

16. Defendants deny the allegations set forth in paragraph "16" of the Complaint, except admit that Mayra Gomez is employed by the City of New York.

17. Defendants deny the allegations set forth in paragraph "17" of the Complaint, except admit that Defendants Bloomberg, Kelly, Esposito, Graham, Colgan and Gomez are employees of the City of New York.

18. Defendants deny the allegations set forth in paragraph "18" of the Complaint.

19. Defendants deny the allegations set forth in paragraph "19" of the Complaint.

20. Defendants deny the allegations set forth in paragraph "20" of the Complaint.

21. Defendants deny the allegations set forth in paragraph "21" of the Complaint.

22. Defendants deny the allegations set forth in paragraph "22" of the Complaint.

23. Defendants deny the allegations set forth in paragraph "23" of the Complaint.

24. Defendants deny the allegations set forth in paragraph "24" of the Complaint.

25. Defendants deny the allegations set forth in paragraph "25" of the Complaint.

26. Defendants deny the allegations set forth in paragraph "26" of the Complaint.

AS TO "FACTUAL BACKGROUND"

27. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "27" of the Complaint.

28. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "28" of the Complaint.

29. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "29" of the Complaint.

30. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "30" of the Complaint.

31. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "31" of the Complaint.

32. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "32" of the Complaint.

33. Defendants deny knowledge or information sufficient to form belief as to the truth of the allegations set forth in paragraph "33" of the Complaint.

34. Defendants deny the allegations set forth in paragraph "34" of the Complaint.

35. Defendants deny the allegations set forth in paragraph "35" of the Complaint.

36. Defendants deny the allegations set forth in paragraph "36" of the Complaint.

37. Defendants deny the allegations set forth in paragraph "37" of the Complaint.

38. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "38" of the Complaint.

39. Defendants deny the allegations set forth in paragraph "39" of the Complaint.

40. Defendants deny the allegations set forth in paragraph "40" of the Complaint.

41. Defendants deny the allegations set forth in paragraph "41" of the Complaint.

42. Defendants deny the allegations set forth in paragraph "42" of the Complaint.

43. Defendants deny the allegations set forth in paragraph "43" of the Complaint.

44. Defendants deny the allegations set forth in paragraph "44" of the Complaint.

45. Defendants deny the allegations set forth in paragraph "45" of the Complaint.

46. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "46" of the Complaint.

47. Defendants deny the allegations set forth in paragraph "47" of the Complaint.

48. Defendants deny the allegations set forth in paragraph "48" of the Complaint.

49. Defendants deny the allegations set forth in paragraph "49" of the Complaint.

50. Defendants deny the allegations set forth in paragraph "50" of the Complaint.

51. Defendants deny the allegations set forth in paragraph "51" of the Complaint.

52. Defendants deny the allegations set forth in paragraph "52" of the Complaint.

53. Defendants deny the allegations set forth in paragraph "53" of the Complaint.

54. Defendants deny the allegations set forth in paragraph "54" of the Complaint.

55. Defendants deny the allegations set forth in paragraph "55" of the Complaint.

56. Defendants deny the allegations set forth in paragraph "56" of the Complaint.

57. Defendants deny the allegations set forth in paragraph "57" of the Complaint.

58. Defendants deny the allegations set forth in paragraph "58" of the Complaint.

59. Defendants deny the allegations set forth in paragraph "59" of the Complaint.

60. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "60" of the Complaint.

61. Defendants deny the allegations set forth in paragraph "61" of the Complaint.

62. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "62" of the Complaint.

63. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "63" of the Complaint.

64. Defendants deny the allegations set forth in paragraph "64" of the Complaint.

65. Defendants deny the allegations set forth in paragraph "65" of the Complaint.

66. Defendants deny the allegations set forth in paragraph "66" of the Complaint.

67. Defendants deny the allegations set forth in paragraph "67" of the Complaint.

68. Defendants deny the allegations set forth in paragraph "68" of the Complaint, except admit that certain members of the NYPD did operate video cameras from time to time during the RNC.

69. Defendants deny the allegations set forth in paragraph "69" of the Complaint.

70. Defendants deny the allegations set forth in paragraph "70" of the Complaint.

71. Defendants deny the allegations set forth in paragraph "71" of the Complaint.

72. Defendants deny the allegations set forth in paragraph "72" of the Complaint.

73. Defendants deny the allegations set forth in paragraph "73" of the Complaint.

74. Defendants deny the allegations set forth in paragraph "74" of the Complaint.

75. Defendants deny the allegations set forth in paragraph "75" of the Complaint.

76. Defendants deny the allegations set forth in paragraph "76" of the Complaint.

77. Defendants deny the allegations set forth in paragraph "77" of the Complaint.

78. Defendants deny the allegations set forth in paragraph "78" of the Complaint.

79. Defendants deny the allegations set forth in paragraph "79" of the Complaint.

80. Defendants deny the allegations set forth in paragraph "80" of the Complaint.

81. Defendants deny the allegations set forth in paragraph "81" of the Complaint.

82. Defendants deny the allegations set forth in paragraph "82" of the Complaint.

83. Defendants deny the allegations set forth in paragraph "83" of the Complaint.

84. Defendants deny the allegations set forth in paragraph "84" of the Complaint.

85. Defendants deny the allegations set forth in paragraph "85" of the Complaint.

86. Defendants deny the allegations set forth in paragraph "86" of the Complaint.

87. Defendants deny the allegations set forth in paragraph "87" of the Complaint.

88. Defendants deny the allegations set forth in paragraph "88" of the Complaint.

AS TO THE "FIRST CAUSE OF ACTION"

89. In response to the allegations set forth in paragraph "89" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

90. Defendants deny the allegations set forth in paragraph "90" of the Complaint.

91. Defendants deny the allegations set forth in paragraph "91" of the Complaint.

92. Defendants deny the allegations set forth in paragraph "92" of the Complaint.

93. Defendants deny the allegations set forth in paragraph "93" of the Complaint.

94. Defendants deny the allegations set forth in paragraph "94" of the Complaint.

95. Defendants deny the allegations set forth in paragraph "95" of the Complaint.

96. Defendants deny the allegations set forth in paragraph "96" of the Complaint.

97. Defendants deny the allegations set forth in paragraph "97" of the Complaint.

98. Defendants deny the allegations set forth in paragraph "98" of the Complaint.

99. Defendants deny the allegations set forth in paragraph "99" of the Complaint.

AS TO THE "SECOND CAUSE OF ACTION"

100. In response to the allegations set forth in paragraph "100" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

101. Defendants deny the allegations set forth in paragraph "101" of the Complaint.

102. Defendants deny the allegations set forth in paragraph "102" of the Complaint.

103. Defendants deny the allegations set forth in paragraph "103" of the Complaint.

104. Defendants deny the allegations set forth in paragraph "104" of the Complaint.

105. Defendants deny the allegations set forth in paragraph "105" of the Complaint.

AS TO THE "THIRD CAUSE OF ACTION"

106. In response to the allegations set forth in paragraph "106" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

107. Defendants deny the allegations set forth in paragraph "107" of the Complaint.

108. Defendants deny the allegations set forth in paragraph "108" of the Complaint.

AS TO THE "FOURTH CAUSE OF ACTION"

109. In response to the allegations set forth in paragraph "109" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

110. Defendants deny the allegations set forth in paragraph "110" of the Complaint.

111. Defendants deny the allegations set forth in paragraph "111" of the Complaint.

112. Defendants deny the allegations set forth in paragraph "112" of the Complaint.

113. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "113" of the Complaint.

114. Defendants deny the allegations set forth in paragraph "114" of the Complaint.

115. Defendants deny the allegations set forth in paragraph "115" of the Complaint.

116. Defendants deny the allegations set forth in paragraph "116" of the Complaint.

117. Defendants deny the allegations set forth in paragraph "117" of the Complaint.

118. Defendants deny the allegations set forth in paragraph "118" of the Complaint.

119. Defendants deny the allegations set forth in paragraph "119" of the Complaint.

AS TO THE "FIFTH CAUSE OF ACTION"

120. In response to the allegations set forth in paragraph "120" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

121. Defendants deny the allegations set forth in paragraph "121" of the Complaint.

122. Defendants deny the allegations set forth in paragraph "122" of the Complaint.

123. Defendants deny the allegations set forth in paragraph "123" of the Complaint.

124. Defendants deny the allegations set forth in paragraph "124" of the Complaint.

125. Defendants deny the allegations set forth in paragraph "125" of the Complaint.

126. Defendants deny the allegations set forth in paragraph "126" of the Complaint.

127. Defendants deny the allegations set forth in paragraph "127" of the Complaint.

128. Defendants deny the allegations set forth in paragraph "128" of the Complaint.

129. Defendants deny the allegations set forth in paragraph "129" of the Complaint.

130. Defendants deny the allegations set forth in paragraph "130" of the Complaint.

131. Defendants deny the allegations set forth in paragraph "131" of the Complaint.

132. Defendants deny the allegations set forth in paragraph "132" of the Complaint.

133. Defendants deny the allegations set forth in paragraph "133" of the Complaint.

AS TO THE "SIXTH CAUSE OF ACTION"

134. In response to the allegations set forth in paragraph "134" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

135. Defendants deny the allegations set forth in paragraph "135" of the Complaint.

136. Defendants deny the allegations set forth in paragraph "136" of the Complaint.

137. Defendants deny the allegations set forth in paragraph "137" of the Complaint.

138. Defendants deny the allegations set forth in paragraph "138" of the Complaint.

139. Defendants deny the allegations set forth in paragraph "139" of the Complaint.

140. Defendants deny the allegations set forth in paragraph "140" of the Complaint.

141. Defendants deny the allegations set forth in paragraph "141" of the Complaint.

142. Defendants deny the allegations set forth in paragraph "142" of the Complaint.

143. Defendants deny the allegations set forth in paragraph "143" of the Complaint.

144. Defendants deny the allegations set forth in paragraph "144" of the Complaint.

145. Defendants deny the allegations set forth in paragraph "145" of the Complaint.

146. Defendants deny the allegations set forth in paragraph "146" of the Complaint.

AS TO THE "SEVENTH CAUSE OF ACTION"

147. In response to the allegations set forth in paragraph "147" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

148. Defendants deny the allegations set forth in paragraph "148" of the Complaint.

149. Defendants deny the allegations set forth in paragraph "149" of the Complaint including all of its subparts.

150. Defendants deny the allegations set forth in paragraph "150" of the Complaint.

AS TO THE "EIGHTH CAUSE OF ACTION"

151. In response to the allegations set forth in paragraph "151" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

152. Defendants deny the allegations set forth in paragraph "152" of the Complaint.

153. Defendants deny the allegations set forth in paragraph "153" of the Complaint.

AS TO THE "NINTH CAUSE OF ACTION"

154. In response to the allegations set forth in paragraph "154" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

155. Defendants deny the allegations set forth in paragraph "155" of the Complaint.

156. Defendants deny the allegations set forth in paragraph "156" of the Complaint including all of its subparts.

157. Defendants deny the allegations set forth in paragraph "157" of the Complaint.

158. Defendants deny the allegations set forth in paragraph "158" of the Complaint.

159. Defendants deny the allegations set forth in paragraph "159" of the Complaint.

AS TO THE "TENTH CAUSE OF ACTION"

160. In response to the allegations set forth in paragraph "160" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

161. Defendants deny the allegations set forth in paragraph "161" of the Complaint.

162. Defendants deny the allegations set forth in paragraph "162" of the Complaint.

163. Defendants deny the allegations set forth in paragraph "163" of the Complaint.

164. Defendants deny the allegations set forth in paragraph "164" of the Complaint.

165. Defendants deny the allegations set forth in paragraph "165" of the Complaint.

166. Defendants deny the allegations set forth in paragraph "166" of the Complaint.

167. Defendants deny the allegations set forth in paragraph "167" of the Complaint.

168. Defendants deny the allegations set forth in paragraph "168" of the Complaint.

169. Defendants deny the allegations set forth in paragraph "169" of the Complaint.

170. Defendants deny the allegations set forth in paragraph "170" of the Complaint.

171. Defendants deny the allegations set forth in paragraph "171" of the Complaint.

172. Defendants deny the allegations set forth in paragraph "172" of the Complaint.

173. Defendants deny the allegations set forth in paragraph "173" of the Complaint.

174. Defendants deny the allegations set forth in paragraph "174" of the Complaint.

175. Defendants deny the allegations set forth in paragraph "175" of the Complaint.

176. Defendants deny the allegations set forth in paragraph "176" of the Complaint.

177. Defendants deny the allegations set forth in paragraph "177" of the Complaint.

178. Defendants deny the allegations set forth in paragraph "178" of the Complaint.

179. Defendants deny the allegations set forth in paragraph "179" of the Complaint.

180. Defendants deny the allegations set forth in paragraph "180" of the Complaint.

181. Defendants deny the allegations set forth in paragraph "181" of the Complaint.

182. Defendants deny the allegations set forth in paragraph "182" of the Complaint.

183. Defendants deny the allegations set forth in paragraph "183" of the Complaint.

184. Defendants deny the allegations set forth in paragraph "184" of the Complaint.

185. The allegations of paragraph 185 call for legal conclusions and, therefore, require no response. To the extent that they are deemed to call for any response, Defendants deny the allegations set forth in paragraph "185" of the Complaint.

186. Defendants deny the allegations set forth in paragraph "186" of the Complaint.

187. Defendants deny the allegations set forth in paragraph "187" of the Complaint.

188. Defendants deny all of the remaining allegations of the Complaint.

FIRST AFFIRMATIVE DEFENSE

189. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

190. There was probable cause for plaintiff's arrest, detention and prosecution.

THIRD AFFIRMATIVE DEFENSE

191. Any and all injuries alleged in the Complaint were caused, in whole or in part, by plaintiff's culpable, negligent or intervening conduct and were not the proximate result of any act of Defendants.

FOURTH AFFIRMATIVE DEFENSE

192. This action is barred, in whole or in part, by the doctrines of *res judicata* and collateral estoppel.

FIFTH AFFIRMATIVE DEFENSE

193. Defendants have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and, therefore, they are entitled to qualified immunity.

SIXTH AFFIRMATIVE DEFENSE

194. Punitive damages are not recoverable against The City of New York. Punitive damages cannot be recovered against the other Defendants and, if available, the amount of such damages shall be limited by applicable state and federal law, including due process and other provisions of law.

SEVENTH AFFIRMATIVE DEFENSE

195. Defendants have not violated any rights, privileges or immunities secured to the plaintiff under the Constitution, the laws of the United States, the laws of the State of New York or any political subdivision thereof, nor have Defendants violated any act of Congress.

EIGHTH AFFIRMATIVE DEFENSE

196. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion.

NINTH AFFIRMATIVE DEFENSE

197. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion. Therefore, Defendant The City of New York is entitled to governmental immunity from liability.

TENTH AFFIRMATIVE DEFENSE

198. Plaintiff's claims are barred, in whole or in part, by their failure to comply with the conditions precedent to suit including, but not limited to, New York General Municipal Law §§ 50-e and 50-i.

ELEVENTH AFFIRMATIVE DEFENSE

199. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

TWELFTH AFFIRMATIVE DEFENSE

200. Plaintiff's claims are barred, in whole or in part, by the doctrine of absolute immunity.

THIRTEENTH AFFIRMATIVE DEFENSE

201. Process upon one or more of the Defendants was insufficient.

FOURTEENTH AFFIRMATIVE DEFENSE

202. Service of process upon one or more of the defendants was insufficient.

FIFTEENTH AFFIRMATIVE DEFENSE

203. Service of process upon one or more of the defendants was untimely pursuant to applicable law including Rule 4(m) and applicable orders of the Court.

SIXTEENTH AFFIRMATIVE DEFENSE

204. The Court lacks personal jurisdiction over one or more of the Defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

205. To the extent that one or more of the defendants used any force, it was reasonable, necessary and justified to accomplish defendants' official duties and to protect their own physical safety and the physical safety of others.

EIGHTEENTH AFFIRMATIVE DEFENSE

206. Plaintiff failed to mitigate plaintiff's damages.

NINETEENTH AFFIRMATIVE DEFENSE

207. Plaintiff consented to the acts about which plaintiff complains.

TWENTIETH AFFIRMATIVE DEFENSE

208. Plaintiff's claims are barred, in whole or in part, by plaintiff's contributory or comparative negligence and by plaintiff's assumption of the risk.

TWENTY-FIRST AFFIRMATIVE DEFENSE

209. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver and estoppel.

WHEREFORE, Defendants request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 21, 2008

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By: _____/s/_____
James Mirro (JM 2265)
Special Assistant Corporation Counsel
Special Federal Litigation Division